

1 BEFORE THE STATE OF WASHINGTON
2 ENERGY FACILITY SITE EVALUATION COUNCIL
3

4 In the Matter of Application No. 2003-01: EXHIBIT # 42 (DRP-T)
5 SAGEBRUSH POWER PARTNERS, LLC;
6 KITTITAS VALLEY WIND POWER PROJECT
7
8
9

10 **APPLICANT'S PREFILED DIRECT TESTIMONY**
11 **WITNESS #42: DANA PECK**
12

13 Q. Please state your name and business address.
14

15 A. My name is Dana Peck and my business address is 222 E. 4th Ave., Ellensburg WA 98926. I
16 commute daily from my home in Goldendale, Klickitat County, Washington to my job.
17

18 Q. What is your employment position and when did that employment commence?
19

20 A. I am employed by Horizon Wind Energy ("Horizon" herein). I have been with the company
21 since December, 2005, and have been employed there as the company's Project Manager for the
22 Kittitas Valley Wind Power Project ("KVVWPP").
23

24 Q. What are your job duties and responsibilities?
25

1 A. My duties and responsibilities at Horizon include responsibility for development of the Kittitas
2 Valley Wind Power Project. I am responsible for permitting and land use issues, including
3 managing experts and consultants, and interacting with local, state and federal agencies and
4 other interested parties.

5
6 Q. Would you please identify what has been marked for identification ads Exhibit 42-1 (DRP-1)?
7

8 A. Exhibit 42-1 (DRP-1) is my current resume of my educational background and employment
9 experience.
10

11 Q. What, if any, employment history and background do you have in the energy production field
12 other than in your present position at Horizon?
13

14 A. I have spent 31 years in the field of energy policy development and public and private sector
15 project management. Ten of those years were spent working for elected county officials, most
16 recently as the Economic Development Director of Klickitat County for eight years. Prior to
17 that, I spent three years with Kenetech Wind Power as project manager for a 200-megawatt
18 wind power project that was permitted in Klickitat County. With Kenetech, I also assisted in
19 “prospecting” efforts for other Northwest wind power facility sites. From 1987 to 1993, I was
20 manager of strategic planning systems for Pacific Power and Light. In the early 1980’s, I was
21 director of government relations for the federally-funded Western Solar Utilization Network, a
22 13-state consortium working with local governments to promote renewable energy development
23 in the West. From 1975 to 1980, I worked for members of the U.S. House of Representatives
24 (Congressman Jerome Ambro, NY) and a U.S. Senator (Senator Charles Percy, IL) who had
25 interests in renewable energy policy development, as well as the public interest group Solar

1 Lobby, at the time the preeminent renewable energy group in the country, on energy policy
2 issues. My interest and involvement in energy issues in general and renewable energy in
3 particular is a direct outgrowth of attending graduate school studying science, technology and
4 public policy in Washington, D.C. immediately after the 1973 oil embargo.

5
6 Q. Did any of your county employment experiences give you unique qualifications for the KV
7 project manager position?

8
9 A. I was specially suited for this position due to my years spent providing direct staff support to
10 elected rural county officials in their effort to promote job creation, tax base expansion and
11 preservation of the agricultural sector of the rural economy by developing a comprehensive
12 process for siting electrical generation facilities. In that capacity, I most recently worked with
13 the Klickitat County Board of County Commissioners to craft both a programmatic
14 Environmental Impact Statement and changes to the county comprehensive plan and zoning to
15 create an energy overlay zone that achieved tax base expansion and created jobs while
16 preserving the agricultural sector's ability to thrive. We achieved success by enabling wind
17 power projects to be sited, permitted and developed in a rural county while remaining consistent
18 with the surrounding land uses. The other concept built into Klickitat County's policy was to
19 involve the public in the siting decisions in advance of the wind power developer making a
20 specific siting application. In this fashion, it enabled wind project developers to obtain a
21 development permit under rules and standards that had already been legislatively crafted.

22
23 Outside of county government, I have also served as an appointed commissioner on the quasi-
24 judicial Portland Metropolitan Boundary Commission, an organization roughly comparable to a
25 Board of Adjustment but with decisionmaking authority affecting development proposals within

1 the Portland, Oregon Metropolitan Urban Growth Boundary. While energy issues did not come
2 before this commission, it provided me with the direct experience of working through staff to
3 develop negotiated agreements with developers that met established land use standards and
4 criteria. At Pacific Power and Light, I was periodically asked to assist local governments in
5 developing strategic plans for their communities and in that capacity frequently worked with
6 elected officials and staff to identify local priorities leading to comprehensive plan changes. At
7 Multnomah County, Oregon, I was the point of contact for many interest groups and developers
8 interested working with the county. At the Western Solar Utilization Network, I was in frequent
9 contact with local governments that were requesting assistance in developing ordinances to
10 facilitate renewable energy projects.

11
12 Q. Are you experienced with the planning process beginning with comprehensive planning and
13 ending with project-specific applications?

14
15 A. I am accustomed to both the legislative and quasi-judicial nature of project permitting,
16 from my experience as staff to county commissioners, member of a quasi-judicial
17 commission, and as a project applicant. Planning in Washington is a top-down process.
18 Policies are set first through the comprehensive plan. This is a legislative, policy-making
19 process where access to the decision-makers is critical so that the elected body can
20 interact with the populace regarding their vision for the area to be affected by the policies
21 in the area's comprehensive plan designation. Zoning can be a general, area-wide
22 legislative process, in which case detailed criteria are applied to land through a defined
23 enabling document such as a zoning code. This document provides additional details on
24 the roadmap to developing a project. Zoning can also be a site-specific process sought by
25 an application for a rezone, in which case the governing body is making a project-specific

1 decision, acting in a quasi-judicial capacity to apply pre-adopted standards when
2 reviewing the merits of the request for rezone. In such site-specific projects, access to the
3 decision-makers is restricted, making it imperative that the Applicant have a fluid
4 relationship with staff so that issues can be addressed notwithstanding the lack of direct
5 access to the decision-making body. The most specific detail in the planning process is
6 found in development regulations, where the nuts and bolts of a particular project has to
7 demonstrate compliance in order to be considered for approval.

8
9 It is this sequence that is typically reviewed by an Applicant for a development permit.
10 First, one examines the adopted comp plan policies to ensure the project is consistent with
11 policy. The zoning criteria are then applied to the specifics of the project and if
12 inconsistent, a rezone is sought. If consistent with existing zoning or a rezone is granted,
13 then the project is specifically examined for consistency with the development
14 regulations. Once the criteria are established for a particular project, from broad policy
15 down to the very specific details, a Development Agreement can be negotiated, which
16 document is a contract between the permitting agency and Applicant that details exactly
17 the conditions and criteria for that particular development.

18
19 Planning, then, is a continuum that usually provides the Applicant with clearly defined
20 policies, standards and a well-defined path which leads sequentially from review of the
21 project's conformance with comprehensive plan and zoning standards and criteria to the
22 development agreement and permit.

23
24 Q. Has your experience in the field of wind power generation included experience in
25 comprehensive plan and zoning review related to energy project permitting?

1
2 A. The wind power industry has a long history of performing extensive due diligence before
3 pursuing land acquisition and project development at a site. An essential element of the
4 due diligence process is reviewing established comprehensive plan policies and zoning to
5 identify potential zoning and land use conflicts at a proposed site.

6
7 I have been personally involved with this due diligence process, both as a project
8 developer in Klickitat and Kittitas Counties and as a county employee working with
9 developers interested in Klickitat County sites. In fact, I was part of the two-person team
10 from Kenetech that visited Kittitas County in the early 1990's, discussed the potential for
11 windpower development in the area with county representatives, and subsequently
12 erected several wind monitoring towers on the basis of the positive response to wind
13 power received from county staff at that time. It was the meteorological data from those
14 towers erected by Kenetech that initially attracted Horizon's (then Zilkha's) interest in
15 the Kittitas Valley site. The comprehensive plan is the starting point in this process,
16 providing the developer with an initial sense of the project's compatibility and possible
17 mitigation strategies. During development of the Klickitat County energy overlay
18 ordinance, one of our central goals was to provide a base of information in the form of a
19 programmatic environmental impact statement (PEIS) on energy facility siting criteria to
20 inform the Planning Commission, the County Commission, and the general public prior
21 to moving into the legislative process associated with amending the county
22 comprehensive plan and creating the proposed overlay zone. Once in place, the PEIS
23 provided a framework for project developers to assess the "fit" between their proposed
24 project and the overlay zone's criteria, as well as administrative criteria for county
25 decision-making on the proposed project. In addition, the public was provided with an

1 extensive series of opportunities to shape the standards that became a part of the overlay
2 zone as enacted.

3
4 Q. Describe your experience in attempting to obtain development approval for the KVVPP
5 in Kittitas County.

6
7 A. Kittitas County requires an Applicant to seek a comprehensive plan overlay, rezone,
8 Development Agreement, and a development “permit” in a single process. Therefore, the
9 County combines both the legislative process to establish general policy at the same time
10 that the applicant is trying to determine the site-specific rezone merits and also attempts
11 to simultaneously negotiate a Development Agreement that comports with the County’s
12 policies and specific regulations. The difficulty in this process is inherent and readily
13 apparent. There are no specific development regulations, or more specifically,
14 Development Agreement criteria, adopted for wind power projects. Therefore, it is
15 extraordinarily difficult to negotiate a site-specific agreement that complies with both
16 policy and specific details when the same policies and regulations are not established in
17 advance. It is virtually impossible to discern what criteria have to be complied with,
18 specifically insofar as development regulations and criteria are concerned, because there
19 are none adopted by Kittitas County yet the Applicant must negotiate them without
20 guidance from the County in advance.

21
22 With this approval structure, I anticipated a lengthy series of informal and formal
23 discussions with County staff once our application was determined to be complete in
24 October, 2005, in order to determine what kind of criteria we should be addressing and
25 what kinds of materials were expected by the Kittitas County Board of Commissioners

1 (“BOCC”). My years of experience as a county department director negotiating various
2 contracts and agreements, as well as my experience on the Boundary Commission,
3 similarly led me to believe that at some point the BOCC would follow common practice
4 and delegate to their staff a role in the process to enable them to address site-specific
5 issues due to the inability to directly contact decision-makers on such specific topics.
6 This would also facilitate the flow of information regarding matters that were more
7 legislative in nature, and for which contact with decision-makers is typically allowed.
8 However, the consistent response by County staff to questions raised by the Applicant,
9 both informally and formally, whether legislative or project-specific/quasi-judicial in
10 nature, was that they were not empowered with any authority to speak for or negotiate on
11 behalf of the BOCC. Instead, we were consistently directed to the record that was going
12 to be developed through the joint but partially bifurcated public hearings process, which
13 ultimately extended for more than five months, for guidance on answers to our questions.
14 This was the answer even to questions about what criteria we were to apply to the
15 Development Agreement that we were required to negotiate; no criteria existed but would
16 be developed through the public hearings process.

17
18 Recognizing that a public negotiating process could lead to miscommunication and
19 misunderstanding, I consistently initiated staff-level meetings in an attempt to assure we
20 were providing the County with desired, timely information. Those meetings were
21 frequently followed up with a written summary from the Applicant to County staff in
22 order to ensure we had fully understood the general points discussed with staff
23

24 Q. Please give specific examples of information that was sought and discussed with staff and
25 whether it comported with what the BOCC ultimately expressed that it wanted.

1
2 A. Several examples come to mind. We asked staff for direction on the format for a
3 Development Agreement, as the County does not have an approved or required template.
4 We were advised by staff to use the template that was approved for the Wild Horse Wind
5 Power Project.

6
7 In reliance thereon, we used the template from the Wild Horse project, modified to fit the
8 details of the KVVPP project. However, at a hearing of the BOCC on April 27, 2006
9 (page 25, line 21 in the transcript), I was excoriated for using the Wild Horse template in
10 part because our KVVPP draft Development Agreement had a typographical error that
11 referenced a road for the Wild Horse project. Less than a month later, at yet another
12 hearing before the BOCC (May 3, 2006 transcript, page 15, line 6 on), and without
13 advance notice to the Applicant, County staff proceeded to criticize the KVVPP because
14 it did not contain terms that had been present in the Wild Horse agreement,
15 notwithstanding the Applicant have been chastised weeks earlier for using the Wild
16 Horse template. To date, it remains unclear what the BOCC meant for both its staff and
17 the Applicant to apply regarding suitable form and content for a Development
18 Agreement.

19
20 Another example of the confusion that resulted from the process was the repeated
21 suggestion by County staff that we focus on the number of turbine towers and that we not
22 focus on total megawatts to be generated by the KVVPP, with County staff initially
23 stating that they recognized that as technology changes, so too can capacity from a wind
24 turbine with the same typical dimensions. Having been present at the Pre-Hearing
25 Conference of July 12, 2006, just last week, County legal counsel Deputy Prosecuting

1 Attorney James Hurson reversed this position on megawatts versus the number of
2 turbines and criticized the Applicant for not being exact on the precise number of
3 megawatts to be generated by the KVVPP. This again demonstrates that in the absence
4 of pre-established standards and criteria developed either in advance through regulatory
5 requirements, or through an actual, *bona fide* subarea planning exercise, there can be no
6 clarity by any of the parties about what information will be required and acceptable for
7 any future application for wind power project development approval in Kittitas County.
8

9 Yet another area of confusion stemmed from questions which arose late in the process
10 concerning the turbine strings shown in our application that was deemed complete on
11 October of 2005. The application shows a series of strings within which a range of
12 turbines can be constructed depending on available turbine technology at the time of
13 construction. The Applicant understood this to be acceptable for two reasons: first, the
14 same approach of string locations and a range of turbines within the strings was approved
15 in the Wild Horse project; and second, because the County staff had previously deemed
16 that our application was complete. Furthermore, in light of the very rapid advancement of
17 wind energy technology, it is standard practice in our industry to request permit approval
18 for a range of turbine dimensions. Given the unusually protracted length of the permit
19 process for the Kittitas Valley project, it is vital for the Applicant to maintain reasonable
20 flexibility regarding turbine selection (and therefore, precise turbine locations within
21 corridors). For example, many wind turbine models that are currently being installed in
22 the US were not even available at the time the original application was filed in 2003 (e.g.
23 Clipper 2.5MW, Siemens 2.3 MW, Suzlon 2MW, etc.)
24
25

1 The BOCC, however, found the use of a range of turbines to be a basis for denial of the
2 project (Finding #25). The conflicting message from staff and the ultimate decision by
3 the BOCC stems directly from a lack of criteria adopted by the BOCC in advance and
4 upon which a development project can be evaluated by both the Applicant and the
5 County staff.

6
7 Perhaps the most notable aspect of the complete breakdown of the development review
8 process for wind power in Kittitas County arose from the failure by the County to clearly
9 establish the setback distances for turbine placement. Although this became a key
10 consideration for all County Commissioners, and was central to a number of the Findings
11 of Fact used to deny the project (#14-34), there were no defined standards prior to the
12 hearing when the Applicant received a preliminary rejection from the BOCC as
13 chronicled below. In fact, the County analysis of the DEIS and expert testimony used to
14 develop the setback findings has been characterized as without basis in accepted
15 protocols and reflecting a misapplication of the EFSEC DEIS and underlying analyses
16 (Prefiled Supplemental Testimony of Dr. Thomas Priestley, Exhibit 34 SUP(TP-T SUP),
17 pages 4-5).

18
19 Rather than identify standards and criteria for the Applicant to apply, the Kittitas County
20 process instead requires the Applicant to prepare a proposal, submit to environment
21 review and submit a proposed subarea plan, zoning amendment, and Development
22 Agreement that comply with County comprehensive planning policies, zoning and
23 development regulations. Communication with the elected officials is prohibited, and
24 staff is not empowered with authority to speak to details. This leaves the Applicant in the
25

position of guessing what will be an acceptable proposal, including setbacks in the Development Agreement.

In the case of the KVVPP, when we sought clarity from County staff they repeatedly referred us to the record that was developed through the public hearing process in response to the Applicant's question of what setback would be required. There was no ability to negotiate with staff on this most critical term, despite repeated requests by the Applicant for direction from staff. The BOCC never told staff what standard would be applied throughout the period during which the record remained open to negotiate the Development Agreement. Insofar as staff referred the Applicant to the record, even the BOCC was unclear, with different commissioners offering up different opinions on what might be an acceptable distance. The repeated and different distance suggestions by the BOCC were not "actions" upon which the Applicant could rely:

Comments of Commissioner Bowen, May 3, 2006, transcript page 12, line 8 on	Minimum 2,000 foot setback from non-participating landowner's property line Minimum 2,500 foot setback from non-participating landowner residence
Comments of Commissioner Crankovich, May 3, 2006, transcript page 23, line 12 on	One-half mile setbacks from non-participating landowners (unclear if from residences and/or property lines)
Comments of Commissioner Huston, May 3, 2006, transcript page 27, line 22 on	One-half mile to 3,000 foot setbacks (unclear if from residences and/or property lines)

These discussions by the BOCC followed the Applicant's informal conversations with County staff conveying the results of Horizon's internal analyses that, while a setback of

1 1,320 feet greatly exceeded normal practice, the KVVPP site design could be modified to
2 yield that setback while preserving the project's viability. In the course of the May 3
3 hearing, Horizon representative Chris Taylor formally informed the BOCC of the 1,320
4 foot setback offer and that it represented the greatest setback distance that allowed for a
5 viable project.

6
7 Ultimately, the BOCC acted that same night to deny the project on a preliminary basis
8 (May 3, 2006, transcript page 54, line 2) without taking any formal action that identified
9 which setback "standard" was accepted. In a further effort to continue dialogue with the
10 BOCC in pursuit of local compliance following the May 3 hearing and also the
11 appearance by Deputy Prosecuting Attorney James Hurson at the May 8, 2006 EFSEC
12 meeting, the Applicant's attorney conveyed a letter (Anderson to BOCC, May 15, 2006,
13 Second Request for Preemption Exhibit #3) to the BOCC outlining Horizon's position
14 and requesting specific clarification on setbacks and several other points. Although the
15 letter was discussed in the BOCC's agenda session on May 16, 2006, no formal response
16 was made to the letter and although the County had expressed its interest in continuing
17 negotiations with Horizon, the Applicant was left to guess at what the standard would be
18 without any feedback from the County (Horizon letter to Community Development
19 Services Director Piercy, May 19, 2006; Piercy letter to Horizon, May 22, 2006; Horizon
20 letter to BOCC, May 23, 2006; all submitted in Second Request for Preemption Exhibit
21 #3).

22
23 As stated above, the setback "standard" was not established or disclosed until after the
24 record was closed. The BOCC did not take action to adopt a setback standard prior to
25 voting preliminary disapproval of the project.

1
2 In a similar vein, during the course of the County's extended hearings, the project size
3 was reduced and reconfigured by the Applicant without the benefit of any specific, formal
4 guidance from the BOCC. Nonetheless, this was deemed inadequate by both staff and
5 decisions-makers even though they left the Applicant without direction on the specific
6 modifications that could address their concerns. Specific requests to advise the Applicant
7 what, exactly, it could do differently were rejected by staff, who stated they had no
8 authority to speak for the BOCC. This creates a regulatory environment that builds
9 uncertainty into the most fundamental processes necessary for continuation of our modern
10 life, which is the continued generation of affordable electricity upon which every member
11 of our society is, in some manner, dependent
12

13 Q. Did the findings, conclusions and recommendation contained in the Kittitas County
14 Planning Commission's report to the BOCC provide any guidance on how the application
15 did not comply with the county comprehensive plan, subarea, zoning and Development
16 Agreement requirements?
17

18 A. The Planning Commission's report to the BOCC contained no analysis, findings or
19 conclusions regarding the comprehensive plan subarea portion of the Applicant's
20 proposal despite the requirement that any wind power project application include a
21 request for approval of comprehensive plan subarea. The Planning Commission also
22 failed to address the Applicant's proposed findings on how its project is consistent with
23 County plan policies and zoning. Instead of a top-down analysis of general to specific
24 compliance, the Planning Commission recommended denial based on rezone and
25 Development Agreement "incompatibility" with the "neighborhood" despite a failure to

1 even analyze County's comprehensive plan and its rural and natural resources policies, in
2 order to address the necessary comprehensive plan amendment.

3
4 Q. Did the BOCC's decision-making process provide an opportunity to demonstrate
5 compliance with comprehensive planning policies and zoning and thereby facilitate the
6 negotiation of a Development Agreement?

7
8 A. The BOCC never allowed the Applicant contact with it directly or indirectly on the
9 legislative comprehensive subarea plan portion of the application. It never delegated
10 authority to its staff to negotiate or even discuss concrete terms with the Applicant. It
11 closed the record on April 3, 2006, prohibiting new information, and then announced the
12 specific development standard criteria and denied the application on May 3, 2006, using
13 the basis of development standard non-compliance without establishing or analyzing the
14 typical precursors to a project-specific decision, which are comprehensive planning or
15 zoning. In essence, the County's own Wind Farm Overlay siting process was ignored and
16 a single development standard – setback distance - was established without negotiation or
17 correct interpretation of the technical analyses, after a closed record. That decision,
18 which was never taken as a formal action by the BOCC, and changed yet again between
19 the final hearing and adoption of the Findings of Fact, provided the major underpinning
20 for the action to deny the application rather than working through the process from top
21 down, start to finish.

22
23 Q. Is it your opinion that the Kittitas County Wind Farm Overlay and project approval
24 procedure provides a meaningful format in which reasonable efforts exerted by a wind
25 project developer to obtain land use consistency will be processed in accordance with

1 Kittitas County's comprehensive planning, zoning and Development Agreement criteria?

2
3 A. No. The process utilized by Kittitas County provides no predictive value whatsoever for
4 proponents, opponents, wind power project developers, and most significantly, to the tax-
5 and rate-paying consumers who depend on electrical generation. The process in Kittitas
6 County pits the Applicant against itself, trying to discern what in a development proposal
7 will be generally and specifically compliant. The Applicant, without concrete direction
8 from elected officials or delegation to staff, is left to bargain against itself, perpetually
9 reducing and refining its proposal in hopes of winning the blessing of a body that has no
10 set standards or criteria and that the Applicant cannot communicate with. Having
11 committed myself and my company's resources to seeking a "path" to satisfy the County,
12 in my opinion, the process appears to be calculated to preserve uncontrolled, subjective
13 discretionary decision-making power for the BOCC, exposing applicants investing
14 millions of dollars in projects to tremendous financial risk and jeopardy.

15
16 Q. Is it your opinion that Horizon made a good faith effort to obtain Kittitas County approval
17 for the Kittitas Valley Wind Power Project?

18
19 A. Yes. Throughout the process, spanning my first days on the job in early December 2005
20 until the present, the entire focus of our efforts, as the Applicant, has been to achieve
21 local approval for the project. The presence of Joy Potter and myself, both new Horizon
22 employees retained to facilitate the Horizon-County interaction, may be the strongest
23 indication of Horizon's commitment to make every possible reasonable effort to meet the
24 spirit, as well as the letter, of the goal to resolve land use consistency issues with the
25 County. The decision to redesign the site, which greatly reduced the number of turbines

1 to minimize visual impact, predates my position with Horizon. However, it is my opinion,
2 consistent with my review of the testimony of Chris Taylor (CT-T and CT-T-SUP) that
3 the decision to redesign the site provided a clear signal to the County that Horizon was
4 fully committed to successfully reengaging with the County process. Substantial
5 resources were also committed to providing the County with direct access to expert
6 consultants able to provide answers to the County Commissioners, the Planning
7 Commissioners, and the general public. When the lack of specific action in the form of
8 motions or direct instructions made responding to County Commissioner requests
9 difficult, informal meetings with County staff were repeatedly scheduled and letter
10 follow-ups provided to assure every effort was made to meet the as-yet undisclosed
11 BOCC requirements.

12
13 It became increasingly apparent that turbine setback distances from non-participating
14 landowner residences was the central BOCC concern, even in the absence of established
15 standards or clear direction. Horizon analyzed this issue by mapping the setbacks to
16 identify how the BOCC concerns could be addressed. Conveying this information in a
17 closed hearing setting proved difficult, and again Horizon made County staff aware of the
18 company's position as a way to inform the County process and indicate that shadow
19 flicker effects could be addressed through operational controls at the affected turbines and
20 that 1,320 foot setbacks were the greatest distance possible that preserved a viable
21 project, provided benefits, and met needs. The BOCC's May 3 hearing discussion of
22 setbacks far in excess of the Horizon-proposed 1,320 foot setback appeared to send a
23 clear, if disappointing, message from the BOCC to Horizon that an impasse had been
24 reached. At that time, in an effort to provide the BOCC with the opportunity to consider
25

1 an alternative setback standard, Horizon informed the BOCC that the range of setbacks
2 discussed in the hearing rendered the project non-viable.

3
4 The BOCC, having defined a proposed range of 2,000 – 3,000 feet for a setback standard
5 in its May 3 hearing and having been informed by Horizon through correspondence and
6 through County staff that anything beyond a 1,320 foot setback renders the project
7 unviable (Second Request for Preemption Exhibit #3), never responded to Horizon's offer
8 to continue negotiations, further reflecting the impasse created when those standards were
9 identified on May 3. It is this impasse, after extensive, documented efforts by Horizon to
10 achieve local compliance, that prompts Horizon's Second Request for Preemption.